

ASSEMBLY BILL

No. 739

Introduced by Assembly Member Jackson

February 19, 2003

An act to amend Section 706.030 of the Code of Civil Procedure, and to amend Sections 4200, 4201, 4204, 5235, 5237, 5240, 5247, 5253, and 17309 of, and to add Section 17311 to, the Family Code, relating to child support, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 739, as introduced, Jackson. Child support: State Disbursement Unit.

Existing law obligates a parent to support his or her child. Existing federal law, in connection with child support enforcement, requires that the state implement a state disbursement unit to retain the state's eligibility for certain federal funds. Existing law creates within the Department of Child Support Services, in conjunction with the Franchise Tax Board, the California Child Support Automation System, which operates in all California counties and includes the State Disbursement Unit.

This bill would create the Child Support Payment Trust Fund in the State Treasury, which would be administered by the Department of Child Support Services. The bill would require that the state deposit payments received by the State Disbursement Unit, as specified, into the Child Support Payment Trust Fund, for the purpose of processing and providing child support payments. The bill would provide that the fund is continuously appropriated, and that the interest and other earnings accruing on the fund are available to the Department of Child Support Services to offset the cost of administering the State

Disbursement Unit and other child support program activities. The bill would also change references to the Child Support Centralized Collection and Distribution Unit to refer to the State Disbursement Unit.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 706.030 of the Code of Civil Procedure
2 is amended to read:

3 706.030. (a) A “withholding order for support” is an
4 earnings withholding order issued on a writ of execution to collect
5 delinquent amounts payable under a judgment for the support of
6 a child, or spouse or former spouse, of the judgment debtor. A
7 withholding order for support shall be denoted as such on its face.

8 (b) The local child support agency may issue a withholding
9 order for support on a notice of levy pursuant to Section 17522 of
10 the Family Code to collect a support obligation.

11 (1) When the local child support agency issues a withholding
12 order for support, a reference in this chapter to a levying officer is
13 deemed to mean the local child support agency who issues the
14 withholding order for support.

15 (2) Service of a withholding order for support issued by the
16 local child support agency may be made by first-class mail or in
17 any other manner described in Section 706.101. Service of a
18 withholding order for support issued by the local child support
19 agency is complete when it is received by the employer or a person
20 described in paragraph (1) or (2) of subdivision (a) of Section
21 706.101, or if service is by first-class mail, service is complete as
22 specified in Section 1013.

23 (3) The local child support agency shall serve upon the
24 employer the withholding order for support, a copy of the order,
25 and a notice informing the support obligor of the effect of the order
26 and of his or her right to hearings and remedies provided in this
27 chapter and in the Family Code. The notice shall be accompanied
28 by the forms necessary to obtain an administrative review and a
29 judicial hearing and instructions on how to file the forms. Within
30 10 days from the date of service, the employer shall deliver to the
31 support obligor a copy of the withholding order for support, the



1 forms to obtain an administrative review and judicial hearing, and
2 the notice. If the support obligor is no longer employed by the
3 employer and the employer does not owe the support obligor any
4 earnings, the employer shall inform the local child support agency
5 that the support obligor is no longer employed by the employer.

6 (4) An employer who fails to comply with paragraph (3) shall
7 be subject to a civil penalty of five hundred dollars (\$500) for each
8 occurrence.

9 (5) The local child support agency shall provide for an
10 administrative review to reconsider or modify the amount to be
11 withheld for arrearages pursuant to the withholding order for
12 support, if the support obligor requests a review at any time after
13 service of the withholding order. The local child support agency
14 shall provide the review in the same manner and timeframes
15 provided for resolution of a complaint pursuant to Section 17800
16 of the Family Code. The local child support agency shall notify the
17 employer if the review results in any modifications to the
18 withholding order for support. If the local child support agency
19 cannot complete the administrative review within 30 calendar
20 days of receipt of the complaint, the local child support agency
21 shall notify the employer to suspend withholding any disputed
22 amount pending the completion of the review and the
23 determination by the local child support agency.

24 (6) Nothing in this section prohibits the support obligor from
25 seeking a judicial determination of arrearages pursuant to
26 subdivision (c) of Section 17256 of the Family Code or from filing
27 a motion for equitable division of earnings pursuant to Section
28 706.052 either prior to or after the administrative review provided
29 by this section. Within five business days after receiving notice of
30 the obligor having filed for judicial relief pursuant to this section,
31 the local child support agency shall notify the employer to suspend
32 withholding any disputed amount pending a determination by the
33 court. The employer shall then adjust the withholding within not
34 more than nine days of receiving the notice from the local child
35 support agency.

36 (c) Notwithstanding any other provision of this chapter:

37 (1) An employer shall continue to withhold pursuant to a
38 withholding order for support until the earliest of the dates
39 specified in paragraph (1), (2), or (3) of subdivision (a) of Section
40 706.022, except that a withholding order for support shall

1 automatically terminate one year after the employment of the
2 employee by the employer terminates.

3 (2) A withholding order for support has priority over any other
4 earnings withholding order. An employer upon whom a
5 withholding order for support is served shall withhold and pay
6 over earnings of the employee pursuant to that order
7 notwithstanding the requirements of another earnings withholding
8 order.

9 (3) Subject to paragraph (2) and to Article 3 (commencing with
10 Section 706.050), an employer shall withhold earnings pursuant
11 to both a withholding order for support and another earnings
12 withholding order simultaneously.

13 (4) An employer who willfully fails to withhold and forward
14 support pursuant to a valid earnings withholding order for support
15 issued and served upon the employer pursuant to this chapter is
16 liable to the support obligee, as defined in Section 5214 of the
17 Family Code, for the amount of support not withheld, forwarded,
18 or otherwise paid to the support obligee.

19 (5) Notwithstanding any other provision of law, an employer
20 shall send all earnings withheld pursuant to a withholding order for
21 support to the levying officer or the ~~Child Support Centralized~~
22 ~~Collection and Distribution~~ *State Disbursement* Unit as described
23 in Section 17309 of the Family Code within the time period
24 specified by federal law.

25 (6) Once the ~~Child Support Centralized Collection and~~
26 ~~Distribution~~ *State Disbursement* Unit as described in Section
27 17309 of the Family Code is operational, all support payments
28 made pursuant to an earnings withholding order shall be made to
29 that unit.

30 (7) Earnings withheld pursuant to an earnings withholding
31 order for support shall be credited toward satisfaction of a support
32 judgment as specified in Section 695.221.

33 SEC. 2. Section 4200 of the Family Code is amended to read:

34 4200. In any proceeding where a court makes or has made an
35 order requiring the payment of child support to a parent receiving
36 welfare moneys for the maintenance of children for whom support
37 may be ordered, the court shall do both of the following:

38 (a) Direct that the payments of support shall be made to the
39 county officer designated by the court for that purpose. Once the
40 ~~Child Support Centralized Collection and Distribution~~ *State*



1 *Disbursement* Unit is implemented pursuant to Section 17309, all
2 payments shall be directed to the ~~Child Support Centralized~~
3 ~~Collection and Distribution~~ *State Disbursement* Unit instead of the
4 county officer designated by the court.

5 (b) Direct the local child support agency to appear on behalf of
6 the welfare recipient in any proceeding to enforce the order.

7 SEC. 3. Section 4201 of the Family Code is amended to read:

8 4201. In any proceeding where a court makes or has made an
9 order requiring the payment of child support to the person having
10 custody of a child for whom support may be ordered, the court may
11 do either or both of the following:

12 (a) Direct that the payments shall be made to the county officer
13 designated by the court for that purpose. Once the ~~Child Support~~
14 ~~Centralized Collection and Distribution~~ *State Disbursement* Unit
15 is implemented pursuant to Section 17309, all payments shall be
16 directed to the ~~Child Support Centralized Collection and~~
17 ~~Distribution~~ *State Disbursement* Unit instead of the county officer
18 designated by the court.

19 (b) Direct the local child support agency to appear on behalf of
20 the minor children in any proceeding to enforce the order.

21 SEC. 4. Section 4204 of the Family Code is amended to read:

22 4204. Notwithstanding any other provision of law, in any
23 proceeding where the court has made an order requiring the
24 payment of child support to a person having custody of a child and
25 the child support is subsequently assigned to the county pursuant
26 to Section 11477 of the Welfare and Institutions Code or the person
27 having custody has requested the local child support agency to
28 provide child support enforcement services pursuant to Section
29 17400, the local child support agency may issue a notice directing
30 that the payments shall be made to the local child support agency,
31 another county office, or the ~~Child Support Centralized Collection~~
32 ~~Distribution~~ *State Disbursement* Unit pursuant to Section 17309.
33 The notice shall be served on both the support obligor and obligee
34 in compliance with Section 1013 of the Code of Civil Procedure.
35 The local child support agency shall file the notice in the action in
36 which the support order was issued.

37 SEC. 5. Section 5235 of the Family Code is amended to read:

38 5235. (a) The employer shall continue to withhold and
39 forward support as required by the assignment order until served
40 with notice terminating the assignment order. If an employer

1 withholds support as required by the assignment order, the obligor
2 shall not be held in contempt or subject to criminal prosecution for
3 nonpayment of the support that was withheld by the employer but
4 not received by the obligee. If the employer withheld the support
5 but failed to forward the payments to the obligee, the employer
6 shall be liable for the payments, including interest, as provided in
7 Section 5241.

8 (b) Within 10 days of service of a substitution of payee on the
9 employer, the employer shall forward all subsequent support to the
10 governmental entity or other payee that sent the substitution.

11 (c) The employer shall send the amounts withheld to the
12 obligee within the timeframe specified in federal law and shall
13 report to the obligee the date on which the amount was withheld
14 from the obligor's wages.

15 (d) The employer may deduct from the earnings of the
16 employee the sum of one dollar (\$1) for each payment made
17 pursuant to the order.

18 (e) Once the ~~Child Support Centralized Collection and~~
19 ~~Distribution~~ *State Disbursement* Unit as required by Section
20 17309 is operational, the employer shall send all earnings withheld
21 pursuant to this chapter to the ~~Child Support Centralized~~
22 ~~Collection and Distribution~~ *State Disbursement* Unit instead of the
23 obligee.

24 SEC. 6. Section 5237 of the Family Code is amended to read:

25 5237. (a) Except as provided in subdivisions (b) and (c), the
26 obligee shall notify the employer of the obligor, by first-class mail,
27 postage prepaid, of any change of address within a reasonable
28 period of time after the change.

29 (b) Where payments have been ordered to be made to a county
30 officer designated by the court, the obligee who is the parent,
31 guardian, or other person entitled to receive payment through the
32 designated county officer shall notify the designated county
33 officer by first-class mail, postage prepaid, of any address change
34 within a reasonable period of time after the change.

35 (c) If the obligee is receiving support payments from the ~~Child~~
36 ~~Support Centralized Collection and Distribution~~ *State*
37 *Disbursement* Unit as required by Section 17309, the obligee shall
38 notify the ~~Child Support Centralized Collection and Distribution~~
39 *State Disbursement* Unit instead of the employer of the obligor as
40 provided in subdivision (a).

(d) If the employer, designated county officer, or the ~~Child Support Centralized Collection and Distribution State Disbursement~~ Unit is unable to deliver payments under the assignment order for a period of six months due to the failure of the obligee to notify the employer or designated county officer of a change of address, the employer or designated county officer shall not make any further payments under the assignment order and shall return all undeliverable payments to the obligor.

SEC. 7. Section 5240 of the Family Code is amended to read:

5240. Upon the filing and service of a motion and a notice of motion by the obligor, the court shall terminate the service of an assignment order if past due support has been paid in full, including any interest due, and if any of the following conditions exist:

(a) With regard to orders for spousal support, the death or remarriage of the spouse to whom support is owed.

(b) With regard to orders for child support, the death or emancipation of the child for whom support is owed.

(c) The court determines that there is good cause, as defined in Section 5260, to terminate the assignment order. This subdivision does not apply if there has been more than one application for an assignment order.

(d) The obligor meets the conditions of an alternative arrangement specified in paragraph (2) of subdivision (b) of Section 5260, and a wage assignment has not been previously terminated and subsequently initiated.

(e) There is no longer a current order for support.

(f) The termination of the stay of an assignment order under Section 5261 was improper, but only if that termination was based upon the obligor's failure to make timely support payments as described in subdivision (b) of Section 5261.

(g) The employer or agency designated to provide services under Title IV-D of the Social Security Act or the ~~Child Support Centralized Collection and Distribution State Disbursement~~ Unit is unable to deliver payment for a period of six months due to the failure of the obligee to notify that employer or agency or the ~~Child Support Centralized Collection and Distribution State Disbursement~~ Unit of a change in the obligee's address.

SEC. 8. Section 5247 of the Family Code is amended to read:

1 5247. Neither the local child support agency nor an employer
2 shall be subject to any civil liability for any amount withheld and
3 paid to the obligee, the local child support agency, or the ~~Child~~
4 ~~Support Centralized Collection and Distribution State~~
5 ~~Disbursement~~ Unit pursuant to an earnings assignment order or
6 notice of assignment.

7 SEC. 9. Section 5253 of the Family Code is amended to read:

8 5253. Upon receipt of the application, the court shall issue,
9 without notice to the obligor, an assignment order requiring the
10 employer of the obligor to pay to the obligee or the ~~Child Support~~
11 ~~Centralized Collection and Distribution State Disbursement~~ Unit
12 that portion of the earnings of the obligor due or to become due in
13 the future as will be sufficient to pay an amount to cover both of
14 the following:

15 (a) The amount ordered by the court for support.

16 (b) An amount which shall be ordered by the court to be paid
17 toward the liquidation of any arrearage or past due support
18 amount.

19 SEC. 10. Section 17309 of the Family Code is amended to
20 read:

21 17309. Effective October 1, 1998, the state shall operate a
22 ~~Child Support Centralized Collection and Distribution State~~
23 ~~Disbursement~~ Unit as required by federal law (42 U.S.C. Secs. 654
24 (27), 654a(g), and 654b).

25 SEC. 11. Section 17311 is added to the Family Code, to read:

26 17311. (a) The Child Support Payment Trust Fund is hereby
27 created in the State Treasury. The department shall administer the
28 fund.

29 (b) (1) The state shall deposit child support payments received
30 by the State Disbursement Unit, including those amounts that
31 result in overpayment of child support, into the Child Support
32 Payment Trust Fund, for the purpose of processing and providing
33 child support payments. Notwithstanding Section 13340 of the
34 Government Code, the fund is continuously appropriated for the
35 purposes of processing child support payments by State
36 Disbursement Unit.

37 (2) Interest and other earnings that accrue on the fund shall be
38 available to the department to offset the cost of administering the

1 State Disbursement Unit and other child support program
2 activities.

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